



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
TEGE EO Examinations Mail Stop 4920 DAL
1100 Commerce St.
Dallas, Texas 75242

501.03-00

Date: July 1, 20013

Number: 201414023
Release Date: 4/4/2014

LEGEND

ORG – Organization name
XX – Date Address - address

Taxpayer Identification Number:
Person to Contact:
Employee Identification Number:
Employee Telephone Number:
(Phone)
(Fax)

ORG
ADDRESS

CERTIFIED MAIL – RETURN RECEIPT

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code. Our favorable determination letter to you dated May 22, 20XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective October 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

Organizations described in IRC 501(c)(3) and exempt under section 501(a) must be both organized and operated exclusively for exempt purposes. You have failed to produce documents to establish that you are operated exclusively for exempt purposes and that no part of your net earnings inures to the benefit of private shareholders or individuals. You failed to produce documents to allow the Internal Revenue Service to examine your records regarding your receipts, expenditures, or activities as required by sections 6001 and 6033(a)(1) of the Code.

You were originally granted exemption to engage in down payment assistance and to provide housing for low income individuals. Neither of these activities was ever engaged in by you. You notified the Service that the organization was adding programs that would educate low income borrowers in the areas of homeownership. However, when the Service requested documentation related to the assertions that these services were being offered only to low income individuals, you produced none. You had been previously issued an advisory letter relating to your inability to document though records that your services were only being offered to low income families. The

subsequent examination found that you lacked the records to substantiate this assertion.

You have not documented that there is not private benefit to lenders, builders, and other parties. Nor have you sufficiently documented that there is not an element of inurement in your dealings with disqualified individuals.

Your stated charitable purposes were to: (1) lessen the burden of government agencies; (2) provide the opportunity for low and median income citizens to purchase homes; and (3) combat community deterioration. You have not demonstrated or documented that your activities achieve any of these goals.

Contributions to your organization are no longer deductible under IRC §170 after October 1, 20XX.

You are required to file income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the tax year ending September 30, 20XX, and for all tax years thereafter in accordance with the instructions of the return.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Internal Revenue Code.

If you decide to contest this determination under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia must be filed before the 91st Day after the date this determination was mailed to you. Please contact the clerk of the appropriate court for rules regarding filing petitions for declaratory judgments by referring to the enclosed Publication 892. You may write to the United States Tax Court at the following address:

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free, 1-877-777-4778, and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations



Department of the Treasury
Internal Revenue Service
Tax Exempt and Government Entities Division
31 Hopkins Plaza, Room 1400
Baltimore, MD 21201

ORG
ADDRESS

Date:
March 25, 2013
Taxpayer Identification Number:

Form:

Tax year(s) ended:

Person to contact / ID number:

Contact numbers:

Manager's name / ID number:

Manager's contact number:

Response due date:

Certified Mail - Return Receipt Requested

Dear :

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the

IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter. The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate
TAS-1500, District of Columbia LTA Office
1111 Constitution Ave., K
Washington, DC 20224
Phone Number: (202) 874-7203

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Taxpayer ORG		Year/Period Ended 20XX09

LEGEND

ORG - Organization name ORG-1 - 1st Organization name XX - Date
City - city State - state Account - account RA-1 - 1st RA CO-1
THROUGH CO-4 - 1st THROUGH 4th COMPANIES

ISSUES:

Whether ORG, is operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

FACTS:

ORG Application:

The taxpayer was incorporated pursuant to nonprofit statutes in the State of State on October 10, 20XX. On November 23, 20XX the Service received the T/P's application for exemption. At that time, the organization's name was ORG-1.

Per Part II, Item 1 of the T/P's application for exemption; the T/P states the following:

"The organization was formed by a group of individuals for the purpose of operating the CO-1 whom will begin as a statewide program and expand regionally and then nationally.

ORG's charitable purposes are (1) to lessen the burden of government agencies; (2) to provide the opportunity for low and median income citizens to purchase homes; and (3) to combat community deterioration.

The ORG-1 primary charitable activity, which will account for approximately 90 percent of the Corporation's current time and resources, is the CO-1."

The T/P describes this program as follows:

"The program is designed to provide assistance to individuals who otherwise would be unable to purchase a home. Typically, those individuals will have an income that falls below % of the median income as established by HUD (% in State) to qualify to purchase homes. The criterion for selection will be determined on this basis and all applications will be reviewed by the staff of the Foundation for approval. The Foundation will provide a charitable grant or gift of up to % to each qualified buyer. The amount is based on the final sale price of the home and the allowable limits of the mortgage instrument being used. The Foundation will charge the seller of the home a program service fee up to % of the final sale price at the close of escrow. The service fee is paid in return for the Foundation's efforts to promote the seller's home, and is not received by the Foundation until after the close of escrow. The service fee is allocated to the Foundation's Trust Fund. (The Foundation Trust Fund is a pooled fund of grants and fees."

"As a qualified charitable nonprofit housing organization, the Foundation provides down payment assistance to qualified homebuyers."

"The Trust Fund assets are used to advance the purposes of the Foundation described herein.)"

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"Approximately % of the foundation's total resources will be directed at activities involved in the purchase and rehabilitation of single family residences (either by acquiring and rehabilitating existing homes or constructing new homes) to be sold under an affordable housing program or leased at a reasonable rent to low and moderate income individuals and families."

In Part II, Item 12b of the application for exemption the T/P states, "the Foundation will only extend their services to homebuyers who are less than % of the median family income. The grant selection process will focus on alleviating poverty and discrimination."

In response to a letter from the Service dated 1/8/20XX, the T/P offered certain clarification regarding its proposed program and who would be eligible to participate in the program. In the T/P's clarification, the following is stated:

"These prospective buyers would be low-middle income individuals who without our support would lack the necessary funds to purchase a home. Our program will indeed be geared toward individuals who are currently renting homes because they lack either down payment funds or the necessary closing costs to fulfill the dream of home ownership.

Furthermore, we will not be asking the sellers of homes to pay a service fee to us. Rather, we will ask them to make charitable donations to our organization. So, simply stated, the seller of the property will no longer be required to pay a service fee to be involved in the program. **Only donations and gifts will be accepted by the foundation.**"

Additional representations made by the T/P are found in its Articles of Incorporation which were submitted as part of the application for exemption under IRC 501(c)(3). Article III (f) states the following, "this Corporation will never be operated for the primary purpose of carrying on a trade or business for profit and no part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons."

The Service recognized ORG as an exempt organization by way of a determination letter dated May 22, 20XX.

Examination

The audit of this organization for the year ending September 30, 20XX was pursuant to a prior audit in which the Revenue Agent conducting the examination noted deficiencies in the organization's operation. As such, the organization was issued an advisory letter relating to inaccuracies found on the 990 return, items that did not reconcile, failure to maintain complete records, and failure to comply with public inspection requirements found in IRC 6104 and 6110. As such, the organization was referred for a future examination.

This Revenue Agent was charged with conducting the audit of the organization for the year ending September 30, 20XX. Of particular interest in this audit would be the organization's compliance with the issues noted in the advisory letter it received as a result of its audit for the period ending September 30, 20XX. Of particular interest to the Service was whether the T/P could document that the services and aid it provided was delivered to members of a charitable class, i.e. low income individuals and families. This was the assertion made by the organization in its application for exemption. Furthermore, the organization

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was cited for its lack of documentation related to this assertion in the advisory letter issued to the organization at the conclusion of the audit of the period ending September 30, 20XX.

The advisory letter issued to the organization at the conclusion of the audit for the year ending September, 30, 20XX stated the following:

"During our examination, we noted your organization, as part of its exempt purpose, provided emergency financial assistance to several low to moderate income individuals facing unexpected emergencies. To substantiate the charitable nature of these payments, your organization provided the IRS with files containing information related to these payments ORG provided financial assistance to. Upon review of these files we identified the following deficiencies:

- missing application for financial assistance; and/or
- missing client assessment worksheets describing the issues currently faced by those individuals requesting financial assistance; and/or
- missing documentation substantiating/verifying the individual qualifies for emergency assistance

Please be aware, ORG is required to maintain adequate documentation to substantiate the charitable nature of any expenditure made by the organization."

For the current year under audit (20XX09), the organization asserts via its 990 return that the organization made grants to individuals in the amount of \$. In an effort to verify that these grants went to members of a charitable class, this Revenue Agent issued an Information Document Request on 12/XX/XX requesting the following information, "Please provide documentation that funds used in the Help Program went to homeowners that qualify as members of a charitable class." The T/P's response to this request came in a letter received on 2/13/XX. It stated the following:

"This is rather vague and far reaching. Since there were thousand of individuals assisted we feel this requests puts undue burden on the organization to support your request. We would suggest that you review some selected cases. In general however our position is that when financial assistance was provided it went to individuals who were recipients of FHA Mortgages. FHA loans fall under the prevision of HUD. The mission of HUD is as follows:

HUD's mission

HUD is the Federal agency that works to help the nation's communities meet their development needs, spur economic growth in distressed neighborhoods, provide housing assistance for the poor, help rehabilitate and develop moderate and low-cost housing, and enforce fair housing laws.

In an age of shrinking Federal budgets, HUD is focusing its resources on providing housing and economic development opportunities where they are most needed and can be best utilized through local planning.

HUD plays a major role in supporting homeownership by underwriting homeownership for lower-and moderate-income families through its mortgage insurance program.

It has long been acknowledged by the IRS that since HUD has a mission to support the poor and rehabilitate distressed neighborhoods that this has unto itself created a charitable class. This is why recipients of our financial assistance must have an FHA loan. Also, we clearly feel that by providing assistance to these borrowers we are reducing the burden of government and the taxpayers. Again, this unto itself defines charitable purpose. If not for our program and support many of these homeowners would have defaulted on their home

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loans and this would have caused the insurance fund (supported by the government through taxes of citizens) to be financially responsible for losses."

In a further attempt to gain access to grant documentation, the Revenue Agent issued a letter to the T/P again requesting access to this documentation. This letter sent on 7/25/XX stated the following regarding the T/P's failure to provide the requested documentation.

"In your response you state that it would be burdensome for your organization to document that funds from the help program go to members of a charitable class. Revenue Ruling 56-304 states the following.

Organizations privately established and funded as charitable foundations which are organized and actively operated to carry on one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1954, and which otherwise meet the requirements for exemption from Federal income tax are not precluded from making distributions of their funds to individuals, provided such distributions are made on a true charitable basis in furtherance of the purposes for which they are organized. However, **organizations of this character which make such distributions should maintain adequate records and case histories to show the name and address of each recipient of aid; the amount distributed to each; the purpose for which the aid was given; the manner in which the recipient was selected and the relationship, if any, between the recipient and (1) members, officers, or trustees of the organization, (2) a grantor or substantial contributor to the organization or a member of the family of either, and (3) a corporation controlled by a grantor or substantial contributor, in order that any or all distributions made to individuals can be substantiated upon request by the Internal Revenue Service.**

Additionally, IRC Section 6001 states the following:

SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts, records necessary to comply with section 6053(c), and copies of statements furnished by employees under section 6053(a).

In the audit of your organization's 20XX return, the examining agent noted that your organization failed to maintain adequate records related to its assistance to individuals. The agent noted that there were missing applications for financial assistance, missing client assessments worksheets describing the issues currently faced by the individuals requesting financial assistance, and missing documentation substantiating/verifying that the individual qualifies for financial assistance. See attachment.

ORG will need to provide the documentation requested by this Revenue Agent. Absent this documentation, the Revenue Agent will not be able to verify that the organization is engaged in exempt activity and will be forced to recommend that the exempt status of the organization be revoked."

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To this date, the T/P has not made this information available to the Revenue Agent.

Another area of concern was the organization's revenue from program services. Initially the T/P did not generate program service revenue. Since its inception to the period under examination, the amount of program service revenue per year is stated below.

Program Service Revenue

<u>Period Ending</u>	<u>Amount</u>
8/30/20XX	\$ -
8/30/20XX	\$ -
8/30/20XX	\$ -
8/30/20XX	\$ -
8/30/20XX	\$ -
8/30/20XX	\$ -
8/30/20XX	\$ -

The review of the initial application for exemption did not indicate that the organization would be attempting to generate program service revenue. In a letter dated November 20, 20XX, the T/P informed the Service that it would like to amend the charitable activities that the organization carried out.

In ORG's application for exemption, it identified two activities that the organization would be engaged in. The first activity was to be down payment assistance to low income home buyers. Per the application, this would constitute % of the organization's activity. Secondly, the organization was to engage in the rehabilitation of and construction of housing for the sale or use by low income individual. This activity was to constitute % of the organization's activity. To date, the organization has not engaged in either of these activities.

In its letter to the Service dated November 30, 20XX, the T/P states that "To date we have only provided the educational aspects of our mission and have not provided homebuyers with financial assistance in conjunction with their home purchase." (It should be noted that the original application did not indicate that the T/P had an educational mission.) In this letter, the T/P requested that it add the following programs to its activities. In part, it states the following:

"The Program: Our Program assists individuals through financially difficult times. The assistance we provide may be financial, educational, or both. Our mission is quite simple. At the ORG we, protect you from the unexpected. This program is geared towards low to moderate income homebuyers...

The funding for this program will come from **solicitations** from other non-profit organization, private individuals, public and private business."

Pre-Homebuyer Education: "This is an educational program developed to provide homebuyers with the knowledge necessary for them to become successful and long-term homeowners. The primary objective of the pre-purchasing counseling is to ensure that homebuyers have a good understanding of the home buying and ownership processes and to identify any potential weakness in the buyers' comprehension or financial capacities...

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The funding for this program will come from a **fee for service** paid by the homebuyer, a lender, or a real estate professional."

Early Delinquency Counseling: "If the homeowner is behind on their mortgage and special arrangements need to be made, the ORG will provide early delinquency counseling and provide financial information back to the lender for appropriate workout options..."

The funding for this program will come from **contributions** received through solicitation from other non-profit organizations, private individuals, public and private business."

Post-Homebuyer Education: "Following the third month of home ownership we will counsel each of the homeowners. By waiting three months we allow for the individuals to get adjusted to the monthly expenses related to the home and to have made purchases related to the home. We will take each person through a re-budgeting process to have them take a realistic look at their income and expenses. If need be, we can offer suggestions and make recommendations that will allow the homeowner to avoid financial problems down the road."

The funding for this program will come from **contributions** received through solicitations from other non-profit organizations, private individuals, public and private businesses."

Punctual Payment Program: "This program is designed to ease the burden of home ownership for **low to moderate income homebuyers in specific communities** throughout the United States while at the same time instilling good, sound financial traits. This program allows for the reimbursement of part or all of a homeowners mortgage payment for a period of time during the initial 12 months of homeownership..."

The program is **funded from The ORG and fundraising efforts** within the real estate, building, lending industry, other non-profits, and public and private entities."

In a letter dated February 8, 20XX, the Service acknowledged receipt of ORG's request to engage in activities not stated on their 1023 application for exemption. The Service requested additional information. Specifically, the Service wanted additional information regarding the following:

1. Who is eligible for these services? What criteria will be used to determine who will receive these services?
2. Will an application be required?
3. Will your services be limited to any individuals?
4. Will fees be charged? How will they be determined?
5. Will anyone receive compensation? How will compensation be determined?
6. Are any of your participants referred to your organization? Does the organization make referrals?
7. Will related individuals be eligible for distributions?
8. How will you ensure the funds paid will be used for exempt purposes?

In general, the Service was seeking assurances that these activities will be exempt in nature and that there would not be a private benefit and/or inurement.

In a letter of response, dated June 18, 20XX, ORG answers the above questions. Pertinent representations made by ORG are as follows:

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1. Regarding emergency funding, "we will assist only low and moderate income families.
2. "Financial assistance will be limited to low-moderate income individual/families. Additionally, the requests will need to be approved based upon need and situation."
3. There is an application. After the application is received, "our counselors gather much more in depth information."
4. Fees will be charged for home educational programs (\$) and \$ for early delinquency counseling.
5. Employees will be compensated according to industry standards.
6. Regarding ensuring that funds are used for tax exempt purposes, the T/P states that "We believe that our grants educational programs meet the guidelines ascribed under 501(c)(3). Additionally, we have legal counsel to guide us and tax advice from both a tax attorney and a CPA that works with non-profit groups.

In a letter dated June 28, 20XX, the Service accepts ORGs change in activities. In this letter the Service states the following:

"Thank you for the information recently submitted regarding your change in activities. We have made it part of your file.

These changes consist of your Program and your pre-homeowner education and ongoing budget/financial counseling program.

Please let us know about any future changes in the character, purposes, method of operation, name or address of your organization. This is a requirement for retaining your exempt status."

This Revenue Agent, in an attempt to determine if program service revenue constituted exempt activity and was operated in accordance with the representations made by the T/P to the Service, requested information regarding these programs. The detail of program service revenue as stated on the 990 return under examination was as follows:

Program Service Revenue Per 990

Help Program	\$
Emergency	
Program	

Nowhere in the T/P's original application or in its request to add programs was there a reference to a "Help Program." Therefore, it was incumbent of the Revenue Agent to gain a complete understanding of this program.

In the second IDR issued to the T/P on 12/XX/XX, the Revenue Agent requested that the T/P provide the following information:

"Please provide complete information regarding program service revenue. This should include an explanation for each source of program service revenue. This explanation should include the rationale that this income is from an exempt activity and a description of how revenue is generated. The programs and amounts requiring explanation are stated below."

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Program Services per Trial Balance

Counseling Service
DRS Fees
Help Program Fees
Mortgage assurance Fees

The T/P's response came in an undated letter received by the Service on February 13, 20XX. It stated the following:

"Counseling Service -ORG provided both pre-homebuyer counseling and early delinquency counseling to homebuyers and homeowners. As such a fee was charged for these services. These fees were NEVER charged to the recipients but to interested parties. This has been a standard practice for non-profits throughout the past 40 years. There are hundreds if not thousands of non-profit organizations that provide counseling services and charge fees to provide these services.

DRS Fees -These were fees charged for early delinquency counseling. When certain homeowners had fallen behind on mortgage payments, we were asked to reach out proactively to them to provide counseling. Since this service was not pre-paid, a separate and distinct fee was charged. See the above comments as to why counseling services are believed to be charitable and allowable.

HELP Program Fees -These are the fees that we were paid to administer the HELP Program activities. These activities include all of the aforementioned items listed for answer #2

Mortgage Assurance Fees -ORG had an umbrella insurance policy that provide for job loss insurance for those members enrolled in our HELP Program. This policy was paid for by us out of revenue we received for administering the HELP Program. The fees were broken out for internal tracking purposes only and were not charged or paid separately by anyone. This is simply no different than us having any other insurance. All we did was allocated a certain amount of our revenue to pay for the policy."

Additional information relating to these programs found in the T/P response is stated below.

"The HELP Program is nothing if not Charitable. It falls into the basic tenants of what a charitable organization should do. We provide counseling and financial assistance to those in need. The entire program is designed to accomplish two things. Assist the needy and to reduce the burden of the government. Below is an outline of the program so that you can detail the exact activities that take place with the HELP Program. Also, please see exhibit #5 for a marketing brochure. Again, the activities below are in line with those proposed to the IRS and those for which ORG received consent.

Below is an outline of the Program:

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The ORG was established to assist individuals and families in maintaining homeownership. "Protecting You from the Unexpected" is our mission and our passion for new homeowners. This is accomplished by providing both education and financial assistance to low-to-moderate income homeowners who experience financial difficulty. Since 20XX the Foundation has been able to provide support to thousands of homeowners who have fallen upon hard times.

Today more than ever the mortgage lending and building industries have experienced a severe loss in consumer trust as economic challenges have plagued an unprecedented number of homeowners in this country. Economists project that delinquencies and foreclosures will continue to increase for the next several years due to a variety of negative financial factors intersecting simultaneously.

Our experience and market data with new homeowners demonstrates that there are many issues that must be addressed in order to ensure successful homeownership.

Challenges Facing Today's Homeowners:

- **Lack of Financial Reserves** -Most homeowners spend their financial reserves required for loan approval within the first 60 days of homeownership. For a majority of low to moderate income homeowners, the first time there is a significant financial setback; there is not enough savings to keep them from experiencing financial challenges that often lead to defaults or delinquencies.
- **Lack of Financial Planning** -A majority of homeowners have an inadequate understanding of their current monthly and future financial obligations. In short, they do not have a budget and do not plan financially for the future. These same homeowners have a negative behavior mindset about finances that traps individuals into a certain way of being.
- **Increased Consumer Debt** -Most homeowners add significant debt related to the home during the initial two-years of homeownership.
- **No Support System or Consumer Advocate** • Few homeowners have any support mechanisms to address even the most common causes of financial difficulty. Additionally they don't have an advocate working on their behalf with the lender.

These financial challenges and many others that homeowners struggle with have deep and long lasting effects on their ability to stay current on their mortgage payments and provide financial stability for their household.

Challenges Facing Today's Lenders:

Most lenders today have some very distinct issues that they are facing relative to their loan portfolio. Many lenders struggle with some or all of the following problems:

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- **Lack of Customer Communication** -The basic lack of infrastructure as well as conflicts with the loan servicing companies inhibit the lender from communicating with the new homeowners. This communication comes at a crucial time for the lender as well as the homeowner. Not only does the lender have issues with early payment defaults but on FHA loans they are also subject to Neighborhood Watch.

- **Inability to Provide Financial safeguards** -In most cases, lenders have no mechanism today to deal with financial challenges of low-to-moderate income homeowners. They have no access to risk mitigation programs or products. While education is important and counseling can prove very helpful, this alone cannot solve the problems.

- **Lack of Proper Pre and Post Home Purchase Counseling** -Today more individuals and families are attaining homeownership. They are doing so with little to no education regarding this significant investment. Most lenders are not prepared to offer this type of education and on-going counseling.

While these are only some of the challenges facing lenders today, they do underscore the gaps that exist. This is where the ORG can assist in closing the gaps for you and your business.

Introducing the **HELP Program** -Developed in conjunction with key industry organizations, this program addresses the challenges that face homeowners and lenders. The HELP program is a comprehensive service that provides financial education, counseling, communication and mortgage protection assistance.

Education and Counseling

Our unique approach to assisting homeowners is unmatched in the industry. In an effort to greatly reduce mortgage delinquencies before they occur, we employ the following process:

Communication and Relationship Building -The HELP program communication is administered; before the home is purchased, during the purchase process, and continues for 24 months after the home purchase. The Program is designed to educate homeowners, assist to control debt associated with their initial two years of homeownership, establish a solid savings plan with cash reserves and create positive long-term financial habits and wellness.

Homebuyer Education -Our Pre-homebuyer Education and Counseling program is an educational service developed to provide homebuyers with the knowledge and tools necessary for them to become successful long-term homeowners. There is a heavy emphasis on the home budgeting process, mindfulness about spending money, ways to save on expenses and how to create and implement a personal savings strategy.

Out-bound Personal Phone Calls -Continuing for the first six months of mortgage payments, we call the homeowner to review the services that are available to them, get a pulse on their current financial state and validate that their mortgage payments will be made on time.

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On-going Communication and Education -Before the homeowner's first mortgage payment is due, and continuing each month for up to two years, we communicate to the homeowner sound financial tips and informational resources to assist in maintaining financial stability.

In essence, we build a positive relationship with homeowners, who recognize us as an organization that truly cares about their financial well-being and knows who to call if a difficulty should arise. Due to our Education and Counseling component, homeowners typically reach out to us even before they miss a payment or before it's too late.

Mortgage Protection Program (IUI coverage)

Today the number one reason for mortgage defaults is loss of employment. Why not protect the homeowner against the very thing that can put their household finances in crisis? This is why our involuntary loss of employment coverage is such a tremendous benefit.

Our economy continues to face challenges, and the security that comes with this type of coverage can make the difference for someone who is contemplating the purchase of a home or assisting them in keeping their home.

Qualified homeowners are enrolled in our Mortgage Protection Program which covers the homeowner(s) for involuntary loss of employment. Program pays up to \$ per month for up to six months of the homeowner's mortgage payments.

Program Benefits

- Up to six months of Mortgage Payments
- Coverage up to \$ per month
- Program underwritten by one of the industry's top insurance companies

Program

This service provides homeowners with financial assistance if an unexpected financial difficulty should arise. The program is intended as a safety net for homeowners should they experience a short-term financial challenge.

The *Program* assists individuals through financially difficult times. The assistance we provide may be financial, educational or both. Our mission is quite simple. At the ORG we, "Protect homeowners from the Unexpected".

There are many homebuyers who encounter short-term financial difficulties. These challenges often lead to early defaults or delinquencies. Suddenly the dream of homeownership is not as fulfilling as once thought. This is where the ORG comes into play.

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If the homeowner experiences an unexpected financial emergency, the ORG may provide financial assistance for the express purpose of making a mortgage payment."

The Revenue Agent did not feel that this answer enabled the Revenue Agent to make a determination as to whether these programs were in fact charitable, as they lacked specificity and were general in nature. In an attempt to gather additional detail on these programs, the Revenue Agent requested more specific information. In a letter to the T/P dated 7/25/XX, the Revenue Agent stated the following:

"ORG's response to question 5 is inadequate. ORG had \$ in program service revenue from four programs. These are as follows:

Program Services per Trial Balance

Counseling Service
DRS Fees
Help Program Fees
Mortgage assurance Fees

It is imperative that the Revenue Agent has complete understanding of each of these individual programs. The Revenue Agent is tasked with determining if these programs are subject to unrelated business tax, whether they represent a private benefit, if they are operated as stated in your application and/or letters amending your activities, and if they are in furtherance of your charitable mission. For this reason it is necessary for the Revenue Agent to have a complete understanding of the individuals programs

Regarding counseling services in the amount of \$ you state that these fees were charged to interested parties. As part of this examination much more detail is needed regarding this program. You neglect to state who these interested parties are. Please provide the names of these interested parties. Please state the nature of their interest, i.e. financial. What is the history of these interested parties and ORG? What is the relationship between these interested parties and the homeowner? Is this service only performed for low income individuals? Is this documented? Are the records readily available for inspection? How much does ORG charge the interested parties for this service? How does the interested party come in contact with ORG? Are there contracts between the interested party and ORG to provide this service? My concern is that this activity could represent a private benefit to the interested parties. If this is the case, this activity would not be considered as part of your charitable mission. The Revenue Agent must understand the totality of this transaction in order to make a determination regarding the exempt nature of this revenue generating counseling service.

Regarding DRS Fees, you state that your organization was asked to reach out to homeowners who had fallen behind on their mortgage payments. Please provide information as to who asked you to reach out to these homeowners, i.e. the lender.

Again, it is necessary for the Revenue Agent to understand the relationship between ORG and all interested parties to this transaction. Who pays the fees associated with this program and what is the fee structure? Who is eligible to participate in this program?

Help Program fees are stated as \$. Please provide information regarding how this revenue is generated. This explanation should include who makes the payment, how the fee is determined, an explanation of the role of all interested parties to this transaction, and who is eligible to participate in this program.

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Mortgage assurance fees are stated as \$. The same information is needed regarding this program as the aforementioned programs. The Revenue Agent must understand all aspects of this program. This would include the parties involved, the fee structure, who pays, and the basis for eligibility."

To date the T/P has not responded to this request.

Inurement

During the course of the examination, the Revenue Agent identified several transactions that could possibly indicate the presence of inurement. During the course of the examination, the Revenue Agent noted that ORG made payments to CO-1. As such, the Revenue Agent requested copies of these statements in the IDR issued on 12/XX/XX. In the T/P's response received on 2/13/XX, the T/P stated the following: "The CO-1 account was the personal credit of RA-1 and not a Account. We have provided all of the statements for RA-1."

In a letter to ORG dated 7/25/XX, the Revenue Agent requested clarification regarding these expenses. The Revenue Agent's question was as follows:

"Your response states that "the CO-1 account was the personal credit of RA-1 and not a Account." As such, you have included in the response RA-1's CO-1 statements. Any payments made by ORG to the personal creditors of RA-1 would be an act of inurement that would expose the organization and RA-1 to penalties under IRC 4958 and possible revocation. Can you clarify this answer? The Revenue Agent has identified the following payments to CO-1 for the year under audit.

CO-1 Payments

1/15/20XX
2/17/20XX
3/18/20XX
4/14/20XX
5/14/20XX
6/18/20XX
7/17/20XX
8/XX/20XX
8/28/20XX
9/XX/20XX
9/28/20XX
11/4/20XX
12/18/20XX

If these payments represent legitimate business expenses of ORG, please provide invoices totaling \$ also provide an explanation of the individual expense and its business relation to ORG."

To date the T/P has not responded to this request.

In the IDR issued to ORG on 12/XX/XX, the Revenue Agent asked the T/P to "Provide a listing of entities doing business with ORG that are controlled by RA-1 or a member of RA-1's family. Provide a similar listing for all entities in which RA-1 or a family member has a financial interest." In the response received on 2/13/XX, the T/P indicated the RA-1 had a financial interest in CO-2 and CO-3.

In the follow up letter from the Service to RA-1 the Revenue Agent posed the following question.

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"You have indicated that you have a financial interest in two entities that do business with ORG. These are CO-2 and CO-3. A review of the General Ledger indicates that ORG made the following payments to CO-3 and CO-2:

CO-3

10/21/20XX
11/21/20XX
12/16/20XX
2/9/20XX
2/18/20XX
3/XX/20XX
4/13/20XX
5/5/20XX
5/8/20XX
6/3/20XX
7/16/20XX
8/XX/20XX
9/22/20XX

CO-2

7/1/20XX
8/3/20XX
9/1/20XX

The Revenue Agent will need a complete explanation of the nature of the services and fees paid to CO-3 and CO-2. This is needed to ensure that these transactions do not represent inurement and that these transactions are conducted at arm's length. If there are contractual relationships with either of these organizations and ORG, please provide copies of the contracts. Also, who negotiated these contracts? Was the Board aware that RA-1 had a financial interest in these companies? Did the Board of ORG approve the contracts?"

To date the T/P has not responded to this request. Nor has it responded to any of the 22 questions raised in the Revenue Agent's letter of 7/25/XX.

On February 21, 20XX, the Revenue Agent met with RA-1 at the IRS offices in City, State. The purpose of this meeting was to secure any information or documentation that had not been submitted to this point and to seek clarification of certain issues related to the examination of ORG. This meeting was also to serve as a closing conference.

At this meeting RA-1 provided some verbal explanations and clarifications related to the Revenue Agent's letter of 7/25/XX. RA-1 explained that CO-2 is an entity that rented space to ORG and that he owns one third of this entity. RA-1 also stated that he felt the rent charged to ORG was below market rates. RA-1 stated that CO-3 was acting as an insurance provider and that funds paid to this organization covered policies related to the loss of employment benefit that was provided by ORG. RA-1 also explained that another entity, CO-4 was a company owned by his sister. CO-4 provided

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counseling services for ORG. In the year under audit, CO-4 was paid \$ for its services. RA-1 contends that payment for these services were reasonable.

At this meeting, none of the documentation requested by the Revenue Agent in the letter of 7/25/XX was provided. The Revenue Agent informed RA-1 that due to this lack of documentation, the Revenue Agent would propose revocation of ORG's exempt status.

LAW:

Section 501 of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for, among other listed purposes, charitable or educational purposes, provided that no part of the net earnings of such corporations inures to the benefit of any private shareholder or individual. See I.R.C. § 501(c)(3).

Section 1.501(c)(3)-1(d)(1)(i) provides that an organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization operates exclusively for exempt purposes only if it engages primarily in activities that accomplish exempt purposes specified in § 501(c)(3). An organization must not engage in substantial activities that are not in furtherance of an exempt purpose. In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest. **To meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests.**

Section 1.501(c)(3)-1(d)(3)(i) provides, in part, that the term "educational" for section 501(c)(3) purposes includes the instruction of the public on subjects useful to the individual and beneficial to the community.

Section 1.501(c)(3)-1(d)(2) defines the term "charitable" for section 501(c)(3) purposes as including relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.

Section 1.501(c)(3)-1(e) provides that an organization that operates a trade or business as a substantial part of its activities may meet the requirements of section 501(c)(3) if the trade or business furthers an exempt purpose, and if the organization's primary purpose does not consist of carrying on an unrelated trade or business.

GOVERNMENT POSITION

It is the position of the government that the T/P has not demonstrated through documentation that it is organized and operated exclusively for exempt purposes as stated in Section 1.501(c)(3)-1(d)(1)(ii).

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The organization was originally granted exemption to engage in down payment assistance and to provide housing for low income individuals. Neither of these activities was ever engaged in by ORG. The organization notified the Service that the organization was adding programs that would educate low income borrowers in the areas of homeownership. However, when the Service requested documentation related to the assertions that these services were being offered only to low income individuals, the organization produced none. ORG had been previously issued an advisory letter relating to its inability to document though records that its services were only being offered to low income families. The subsequent examination found that the organization lacked the records to substantiate this assertion.

ORG has not documented that there is not private benefit to lenders, builders, and other parties. Nor has ORG sufficiently documented that there is not an element of inurement in its dealings with disqualified individuals.

ORG's stated charitable purposes were to (1) to lessen the burden of government agencies; (2) to provide the opportunity for low and median income citizens to purchase homes; and (3) to combat community deterioration. ORG has not demonstrated or documented that its activities achieve any of these goals.

As such, it is the government's position that the tax exempt status of ORG should be revoked as of the beginning of the 20XX09 tax year.

TAXPAYER POSITION

The T/P position is that there may be an ancillary benefit to lenders and builders, but the benefits received by participants in the program outweigh these private benefits. The T/P feels that while the organization conducts business with entities in which RA-1 has a financial interest, these transactions have been conducted at fair prices and have also been done for convenience. The T/P concedes that much of the documentation requested can not be provided. As such, the T/P accepts the Revenue Agent's findings and will not contest the Services actions to revoke the exempt status of ORG.

CONCLUSION

Since the T/P has not demonstrated that the organization is organized and operated exclusively for exempt purposes, the recognition of the organization as a 501(c)(3) entity should be revoked as of the beginning of the 20XX09 tax year.